

S No.: 09/609,166

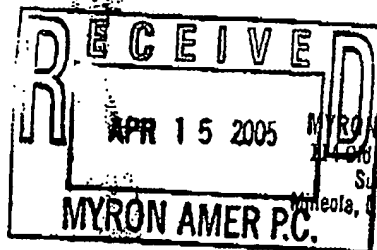
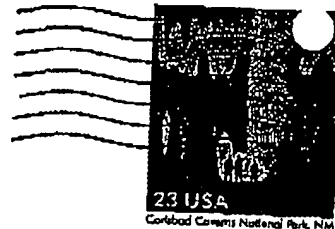
File No.: P-3627-2

Date: April 6, 2005

Applicant: Dr. Michael N. Berke

For: SELF-ADMINISTERED BACK
MASSAGE

The Patent Office date stamped hereon will acknowledge
receipt of Reply to Office Action of 03/17/2005 enclosing
REVISED AMENDMENT PRACTICE; and self-
addressed return postcard.



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

P-3627-2

APPLICANT: DR. MICHAEL N. BERKE
FOR: SELF-ADMINISTERED BACK MASSAGE
SERIAL NO.: 09/609,166
FILED: July 3, 2000
EXAMINER: Andy Kashnikow, Patent Examiner, Art Unit 3764

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action of 03/17/2005, enclosed is REVISED AMENDMENT PRACTICE for making additions and deletions to claim 1 under consideration.

Claim 1 is presented, as noted by the examiner, in Ex parte Jepson format of which the preamble is conceded prior art and, equally important, what follows is a claimed improvement over the prior art.

Thus, as prior art acknowledged by applicant and as disclosed by the cited Bowser patent (hereinafter the '143 patent) is the self-administered massage practiced in a doorway against a massaging device against which there is leaning contact by an individual but, as one improvement amongst others, is the individual being oriented transversely of the plane of the doorway rather than in the plane of the doorway. As a result, and as best understood from Fig. 4, the individual is within reach of a facing doorway frame 30 and presses off against frame 30 to

correspondingly increase the massaging pressure applied at the interface of the massaging device and the individual's back area being massaged.

For good measure, the claim under consideration recites (1) vertical sliding positioning of the massaging device and (2) obviating slippage at the interface of the massaging device and the individual's back area with its attendant benefit, both (1) and (2) results achieved in ways not disclosed in the '143 patent.

In applying a rejection under 35 U.S.C. 102(b,) the examiner has concluded that the subject matter of claim 1 is unpatentable over acknowledged prior art (APA) of the preamble in view of Bowser. The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroval, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052 F USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988). In this case, the fact that there is common use of a doorway for practicing a self-administered back massage does not demonstrate that the Bowser way of achieving this end use makes obvious applicant's way. Rather, what the record demonstrates is that applicant's way embodies significant improvements, properly presented in a Jepson claim format.

For the foregoing reasons, favorable reconsideration of this application is respectfully requested.

Respectfully,

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Dated: April 5, 2005

REVISED AMENDMENT PRACTICE

Claim 1. (Currently amended) ~~in~~ a self-administered back massage, applied to an individual by leaning contact against a semi-spherical configured massaging device, ~~in a doorway~~ an improvement consisting of a method of facilitating establishing said leaning contact between said massaging device and a selected back area of said individual while the individual being oriented transversely comprising the steps of:

A. ~~using~~ providing as a positioning site for a back massage a door frame having two opposite side walls bounding therebetween a vertical plane of a doorway opening;

B. using as a Massaging messaging device a construction comprising a base, a plurality of semi-spherical configurations extending from A front surface one side of said base, and a vertical notch in said base rear surface having consisting of a cooperating pair of side walls bounding a positioning recess therebetween;

C. positioning said massaging device in a transverse relation to a vertically oriented rectangular strip disposed flat against said one side wall of said door frame and having projected in said positioning recess a vertical strip normally serving as a stop for a pivotal traverse of a door mounted in said doorway opening plane limiting said massaging device to linear tracking movement along said door stop vertical strip and prohibited by abutment of said recess side walls against said door stop vertical strip from partaking of movement in transverse relation to said linear tracking;

method consisting of plane of a practiced in a doorway

of the plane of the doorway thereby increasing the massaging pressure applied at the interface of the device & the selected area of the individual

9/15/05R

- D. instructing an individual to assume a position in said plane of said doorway opening preparatory to establishing leaning engagement against said positioned massaging device; and
- E. instructing said individual to supplement said established leaning engagement by pushing against the other of said side wall of said door frame to cause movement of the individual in the direction of said massaging device.

whereby said linear movement contributes to adjusting the position of said massaging device to a back area of a user and said absence of said transverse movement as might result from transverse bodily movements while maintaining said engagement without slippage at an interface of said semi-spherical configurations of said massaging device with a back area of a user contributes to maximizing the self-administered massaging service of said massaging device provides a self-administered back massage.

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Objections

2. Claim 1 is objected to because of the following informalities: line 3, "facilitating establishing" is unclear. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

a. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bowser. Since applicant has utilized Jepson format, and has implied admission of a self-administered device being known in the art, the preamble is treated as prior art. Thus, Bowser discloses a device having a semi-spherical (F) massaging device where a door frame (fig. 1) is used as a site for the massage, where the device is positioned in straddling relation to a vertically oriented rectangular strip disposed along a wall of the frame normally serving

as a stop for a pivotal traverse of a door mounted in the doorway (fig. 1) and instructing an individual to assume a position in the doorway in leaning engagement against the device (col. 2, lines 1-2) where body movements while maintaining engagement provides a self administered back massage (col. 2, lines 25-34).

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. And Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson